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Tips for Success: Resolving Your Provider/Payor Healthcare Dispute

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THE FATE OF THE AFFORDABLE Care Act may be the most significant healthcare issue facing our country. Regardless of the outcome, it is clear that the industry is undergoing dynamic growth and change. With that change comes litigation in all shapes and sizes – patient claims against hospitals and nursing homes; conflicts between physicians and/or healthcare professionals and the hospitals in which they work; and financial disputes between payors and providers.

Claims between payors and providers have resulted in significant amounts of civil litigation and arbitration proceedings, both of which can be costly for all parties. However, with careful planning and communication, early mediation can lead to successful and more economically efficient resolution.

Here are a few tips for consideration.

1. Have you identified all the issues and the necessary parties?

Benjamin Franklin (and subsequently Winston Churchill) said, "If you fail to plan, you are planning to fail!" As with any mediation, advance collaboration between the parties and the mediator is a crucial element

to success. But with payor-provider disputes, this is particularly true.

First, these disputes generally involve multiple issues - both contractual and legal - as well as numerous claims. Identifying all the issues helps the skilled mediator craft a plan for resolution.

Moreover, these disputes may involve multiple parties. It is important that all entities responsible for paying money (or entitled to receive money) are brought into the process in a timely manner so that global resolution may be achieved. These may include parent corporations and subsidiaries, as well as additional providers.

2. What is the amount at stake?

It has been said before, but it bears repeating: mediation is not the time for high level math. Issues such as pricing, reimbursement rates, any appropriate discount rates, etc. should be resolved well in advance of the mediation session. And relevant contracts, related documents and spreadsheets should be exchanged in a timely manner.

3. Is a prompt payment law in play?

Texas is one of many states which has a Prompt Pay Act. The purpose of such laws is to help ensure that medical service providers are fully compensated for their work within specific timeframes. However, the prompt pay statutes do not apply in every situation.

For example, the Texas Prompt Pay Act applies only to HMO's and PPO's. It may not apply to self-funded ERISA plans, federal employee plans and a few others.

Moreover, the Act only applies to "clean claims." Data contained in the claim must be complete, legible and accurate. The claim generally must have been submitted within 95 days of services rendered.

Late payment of these claims may result in substantial monetary penalties to the point where settlement may be impacted. Thus, it is important to ensure that applicability of the laws has properly been evaluated.

4. Remain optimistic.

Your mediator should be prepared to engage early in the process. She should ask the important questions. Have all the issues been identified? Will all necessary parties be present? Have accurate calculations been completed and exchanged? This information will assist the mediator in crafting creative solutions.

Work with the other side(s) to share necessary information. Protective orders may be used to address privacy and confidentiality concerns.

Be open to joint sessions, not for the purpose of table pounding and argument, but to collaborate on resolution strategies. The parties are the ones closest to the dispute and play a valuable role in successful settlements.

Finally, remain optimistic. With careful planning, preparation and open dialogue between the parties, you will have set the stage for successful resolution.

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